

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Ohio Edison	)	
Company, The Cleveland Electric	)	
Illuminating Company, and The Toledo	)	Case No. 17-974-EL-UNC
Edison Company's Compliance with	)	
R.C. 4928.17 and the Ohio Adm. Code	)	
Chapter 4901:1-37.	)	

In the Matter of the Review of the	)	
Distribution Modernization Rider of	)	
Ohio Edison Company, The Cleveland	)	Case No. 17-2474-EL-RDR
Electric Illuminating Company, and The	)	
Toledo Edison Company.	)	

In the Matter of the 2020 Review of the	)	
Delivery Capital Recovery Rider of Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 20-1629-EL-RDR
Illuminating Company, and The Toledo	)	
Edison Company.	)	

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**REPLY BRIEF FOR CONSUMER PROTECTION  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Maureen R. Willis (0020847)  
Ohio Consumers' Counsel

William J. Michael (0070921)  
Counsel of Record  
Senior Counsel  
Thomas J. Brodbeck (0093920)  
John R. Varanese (0044176)  
John B. Steinhart (0099554)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Michael]: (614) 466-1291  
Telephone [Brodbeck]: (614) 466-9565  
Telephone [Varanese]: (614) 387-2965  
Telephone [Steinhart]: (614) 387-2966

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[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[thomas.brodbeck@occ.ohio.gov](mailto:thomas.brodbeck@occ.ohio.gov)  
[john.varanese@occ.ohio.gov](mailto:john.varanese@occ.ohio.gov)  
[john.steinhardt@occ.ohio.gov](mailto:john.steinhardt@occ.ohio.gov)  
(willing to accept service by e-mail)

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**I. INTRODUCTION**

FirstEnergy Corp. claims it has taken responsibility for and condemns the House Bill 6 corruption described in the Deferred Prosecution Agreement ("DPA").<sup>1</sup> This mea culpa to consumers comes five long years after it masterminded what has been described as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio."<sup>2</sup> The extent of the damage to the public trust in Ohio

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<sup>1</sup> Companies Post-Hearing Brief at 1 (July 21, 2025); Companies Ex. 1, *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement (S.D. Ohio) (July 22, 2021) ("DPA").

<sup>2</sup> Armus, Teo, *The Washington Post*, ["GOP Ohio House speaker arrested in connection to \\$60 million bribery scheme"](#) (July 22, 2020).

government caused by FirstEnergy Corp.’s greedy and corrupt actions cannot be overstated.

FirstEnergy Corp., in conjunction with the FirstEnergy Utilities,<sup>3</sup> proclaims it has undertaken significant measures to make amends for its H.B. 6 misconduct, prevent its recurrence, and ensure that its 12,000 employees live its values and focus on serving consumers.<sup>4</sup> In addition to so-called “sweeping organizational changes,”<sup>5</sup> FirstEnergy Corp. and the FirstEnergy Utilities also assert that they have paid over \$390 million in fines to multiple law enforcement and regulatory agencies.<sup>6</sup>

The only reason FirstEnergy Corp. and the FirstEnergy Utilities took any of these actions is because they got caught bribing the former PUCO chair and Ohio House Speaker. And that’s just what we know. We may never know the rest. The actions of FirstEnergy Corp. and the FirstEnergy Utilities were not in the best interests of consumers. They were nothing more than calculated business decisions designed to serve only the interests of a few executives and shareholders of FirstEnergy Corp. It will take more than words and PowerPoints to make amends to the people of Ohio.

They are not off to a good start. Throughout these entire proceedings (spanning almost five years), they have shown that they are still running plays from the “old FirstEnergy” playbook. Rather than take their medicine like a grown-up, they have fought tooth and nail to thwart any reasonable investigation into their bad acts. As a result, they

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<sup>3</sup> Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively the “FirstEnergy Utilities”).

<sup>4</sup> Companies Post-Hearing Brief at 1 (July 21, 2025).

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

have caused the Office of the Ohio Consumers' Counsel ("OCC") and others to expend much time and effort to get justice for the people of Ohio.

Their Post-Hearing Brief is the most recent example. If one is to accept the arguments made there, these proceedings would end with nothing more than a slap on the wrist and a return to business as usual. That would be a travesty of justice for the 1.2 million FirstEnergy consumers and the state as a whole.

OCC has done its best to lay down a marker for justice in these proceedings. Other consumer parties have taken up the mantle as well, seeking relief for consumers. OCC supports arguments by the Northwest Ohio Aggregation Coalition ("NOAC") that FirstEnergy Corp. and the FirstEnergy Utilities should not be allowed to benefit from their misconduct and the harm they inflicted on Ohioans.<sup>7</sup> OCC agrees with NOAC's calls for the PUCO to order FirstEnergy Corp. and the FirstEnergy Utilities to refund their ill-gotten gains to consumers.<sup>8</sup>

As the PUCO itself acknowledged, it is up to the PUCO to "follow the facts wherever they may lead."<sup>9</sup> And the trail to justice must include administering the long overdue medicine FirstEnergy Corp. and the FirstEnergy Utilities so richly deserve—penalties, refunds, and reform.

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<sup>7</sup> See, e.g., Initial Merit Brief of Northwest Ohio Aggregation Coalition (July 21, 2025) at 2.

<sup>8</sup> *Id.*

<sup>9</sup> OMAEG Ex. 10 at ¶ 13; Case No. 20-1629-EL-RDR, Entry (Dec. 15, 2021) (Side Agreements Entry).

## II. ARGUMENT

### A. The Delivery Capital Recovery Rider.

1. **The Blue Ridge auditor’s recommendation that the FirstEnergy Utilities “reverse all adjustments to property-related excess deferred tax adjustments to match the settlement in the TCJA implementation case”<sup>10</sup> is neither moot nor beyond the scope of these proceedings.**

OCC Witness Joseph Buckley<sup>11</sup> supported the findings and recommendations of Rider DCR auditor Blue Ridge that the PUCO order the FirstEnergy Utilities to reverse all property-related excess deferred tax adjustments to match the settlement in the Tax Cuts and Jobs Act Implementation case.<sup>12</sup> Mr. Buckley also recommended that the PUCO apply a 2.5% escalation factor to the refunds for Base Rates, Rider DSE, and Pole Attachment charges, beginning January 1, 2021 through the date of the PUCO’s order in this case.<sup>13</sup>

The FirstEnergy Utilities cite a March 2023 order, issued after Blue Ridge filed its report, where the PUCO concluded that it was “appropriate for the Companies to restore the excess [Accumulated Deferred Income Taxes] balances to reflect the stipulated amounts and allow the Commission to consider the parties’ arguments and the Companies’ adjustments . . . within the next Rider TSA annual filing.”<sup>14</sup> For this reason, the FirstEnergy Utilities claim the issue is moot and beyond the scope of these

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<sup>10</sup> Staff Ex. 1, 2020 Rider DCR Audit, Original Scope Audit Report at 19-22.

<sup>11</sup> OCC filed Direct Testimony of OCC Witness Joseph Perez on May 30, 2025. OCC made the ALJs and parties aware that this testimony was adopted in-whole by OCC Witness Joseph Buckley. Accordingly, this brief will refer to the “Direct Testimony of OCC Witness Joseph Perez (May 30, 2025)” as the “Direct Testimony of OCC Witness Joseph Buckley (May 30, 2025)” (as well as referring to it as Mr. Buckley’s testimony) throughout.

<sup>12</sup> Direct Testimony of OCC Witness Joseph Buckley (May 30, 2025) (“Buckley Direct”) at 1.

<sup>13</sup> *Id.*

<sup>14</sup> Companies Post-Hearing Brief at 21 (July 21, 2025).



proceedings.<sup>15</sup> The FirstEnergy Utilities also urge the PUCO not to consider Mr. Buckley's testimony on this issue.<sup>16</sup> The FirstEnergy Utilities are wrong.

If the PUCO were to approve Blue Ridge's recommendation in this proceeding, it would protect consumers from a claw back of \$28.3 million in deferred tax liabilities owed to consumers under the settlement in Case Number 18-1604-EL-UNC, et al. It would provide refunds to consumers for improper payments made by the FirstEnergy Utilities.<sup>17</sup> The FirstEnergy Utilities' attempt to keep consumers' money should be denied. This issue and Mr. Buckley's related testimony are within the scope of this proceeding and are not moot.

To support his recommendations, Mr. Buckley's testimony includes a discussion of the history of the Tax Cuts and Jobs Act ("TCJA") and how it relates to ratemaking in Ohio, specifically as it relates to Rider DCR.<sup>18</sup> Mr. Buckley's testimony also describes the importance of accumulated deferred income taxes in ratemaking and the FirstEnergy Utilities' excess deferred income taxes reporting timeline at issue in this case.<sup>19</sup>

Mr. Buckley's testimony directly relates to the Blue Ridge Audit. Blue Ridge and the FirstEnergy Utilities address the very issues that Mr. Buckley discusses in his testimony.<sup>20</sup> The issues relating to the FirstEnergy Utilities' accumulated deferred income taxes and excess deferred income taxes are within the scope of this proceeding.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Buckley Direct at 3.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 6-11.

<sup>20</sup> Case No. 20-1629-EL-RDR, FirstEnergy Comments at 3-5 (Oct. 4, 2021); Compliance Audit of the 2020 Delivery Capital Recovery (DCR) Riders of FirstEnergy at 16-17 (Aug. 3, 2021).

Additionally, issues relating to the FirstEnergy Utilities' accumulated deferred income taxes and excess deferred income taxes are not moot. As part of his testimony, Mr. Buckley discusses requirements<sup>21</sup> that were outlined by the settlement filed in Case No. 18-1604-EL-UNC, et al.<sup>22</sup> He recommends that the PUCO enforce the settlement it approved on July 17, 2019.<sup>23</sup> The PUCO Staff recently reiterated its recommendation that the PUCO order "that the beginning balances of excess deferred income taxes be adjusted to reflect the balances as of December 31, 2017."<sup>24</sup> Mr. Buckley is providing the same recommendation that the PUCO Staff has been providing since the settlement was signed.<sup>25</sup> The necessary adjustment to the FirstEnergy Utilities' excess deferred income taxes is just as ripe today as it was when the settlement was signed on November 9, 2018.<sup>26</sup> Rather than honor the settlement's terms, the FirstEnergy Utilities are trying to avoid paying consumers the money they are owed. Clearly, not much has changed at FirstEnergy.

Mr. Buckley's testimony is neither outside the scope of this proceeding, nor is it moot. Rather, it provides relevant background, context and substance. It makes

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<sup>21</sup> Buckley Direct at 6.

<sup>22</sup> *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017*, Case No. 18-1604-EL-UNC, et al., Stipulation (Nov. 9, 2018) and Supplemental Stipulation (Jan. 25, 2019), Attachment A and Supplemental Attachment A, respectively.

<sup>23</sup> Case No. 18-1604-EL-UNC, et al., Opinion and Order (July 17, 2019).

<sup>24</sup> *In the Matter of the Updates to the Tax Savings Adjustment Rider ("Rider TSA") of Ohio Edison Company, The Toledo Edison Company, and The Cleveland Electric Illuminating Company*, Case No. 24-1063-EL-RDR (March 6, 2025); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Tariff Change*, Case No. 18-1656-EL-ATA (Oct. 6, 2020) ("Staff reiterates its recommendation in the Companies' DCR Case and recommends the beginning balances of Excess Deferred Income Taxes be adjusted to reflect the balances as of December 31, 2017, as shown in the Stipulation in this case.")

<sup>25</sup> Buckley Direct at 10.

<sup>26</sup> Case No. 18-1604-EL-UNC, et al., Stipulation (Nov. 9, 2018) and Supplemental Stipulation (Jan. 25, 2019) Attachment A and Supplemental Attachment A, respectively.

recommendations for consumer protection. It should be considered and adopted by the PUCO.

**2. The FirstEnergy Utilities’ objection to an additional audit beyond the narrow and limited Blue Ridge Rider DCR audits should be rejected. To protect consumers, the PUCO should order a full management audit of FirstEnergy Corp. and the FirstEnergy Utilities with a forensic component.**

The FirstEnergy Utilities urge the PUCO not to heed OCC’s calls to expand the Rider DCR Audit.<sup>27</sup> The FirstEnergy Utilities’ motivation is self-serving and shows that transparency is still not in their vocabulary. The PUCO should adopt OCC’s recommendation to require a full management and forensic audit.

As the news emerged that FirstEnergy Corp. bribed Ohio public officials, the PUCO should have ordered a full management and forensic audit of FirstEnergy Corp. and the FirstEnergy Utilities. OCC showed that a full management audit with a forensic component is desperately needed to address the extraordinary level of corruption that occurred leading up to the passage of H.B. 6 and afterward. This is especially true here, where the former PUCO chair resigned nearly a month before the auditor was selected – after it had become clear that he was tied to FirstEnergy Corp’s criminal actions.<sup>28</sup>

Instead, the PUCO retained the same auditor it had used for the last eight years using virtually the same request for proposals (“RFP”) with no adjustments to the audit’s scope to account for the extraordinary circumstances present in this case.<sup>29</sup> What’s worse,

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<sup>27</sup> Companies’ Post-Hearing Brief at 23.

<sup>28</sup> *Id.* at 88. *See, e.g.*, Jeremy Pelzer, Cleveland.com, *Sam Randazzo resigns as Public Utilities Commission of Ohio chair* (Nov. 20, 2020), <https://www.cleveland.com/open/2020/11/sam-randazzo-resigns-as-public-utilities-commission-of-ohio-chair.html> (Attachment AB-17).

<sup>29</sup> Brown Direct at 87-108.

the Blue Ridge auditor had no familiarity with the H.B. 6 scandal or the DPA and so treated this audit no differently than the last seven audits.<sup>30</sup>

OCC also showed how the Blue Ridge Expanded Scope Audit fails to address the root problems, which are FirstEnergy Corp.'s intentional criminal actions, efforts to hide them, and significant misrepresentations to regulators and shareholders.<sup>31</sup> OCC also showed how FirstEnergy Corp.'s disclosed list of 346 payment records, totaling \$24.46 million, was never independently vetted by the PUCO to confirm whether those transactions truly represented the entirety of FirstEnergy Corp.'s misallocations.<sup>32</sup>

Finally, OCC showed why a full audit (with a forensic component) of the expenses the FirstEnergy Utilities was necessary.<sup>33</sup> Here, OCC showed that once FirstEnergy Corp.'s fraud and criminal activity had been discovered, the PUCO potentially allowed the continued victimization of consumers through unlawful charges.<sup>34</sup>

For consumer protection, the PUCO should disregard the FirstEnergy Utilities' arguments. It should order a full management audit with a forensic component of the expenses that the FirstEnergy Utilities charged consumers.

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<sup>30</sup> Tr. Vol. I (Mullinax) at 54:5-14.

<sup>31</sup> Brown Direct at 95.

<sup>32</sup> *Id.* at 96.

<sup>33</sup> *Id.* at 97.

<sup>34</sup> *Id.*

**3. The Blue Ridge auditor took the FirstEnergy Utilities' word for it that no consumer funds were used to pay for the Cleveland Browns Stadium naming rights and never investigated the source of these funds.**

In their Post-Hearing Brief, the FirstEnergy Utilities agreed with Blue Ridge's finding that no consumer funds were used to pay for FirstEnergy Corp.'s stadium-naming rights to Cleveland Browns Stadium.<sup>35</sup> Blue Ridge's finding is suspect.

The PUCO required Blue Ridge to further expand its audit "to determine if the costs of the naming rights for FirstEnergy Stadium have been recovered from ratepayers."<sup>36</sup> This required Blue Ridge to actually investigate the source of the funds used by FirstEnergy Corp. to pay for the naming rights of the stadium. Blue Ridge's audit report makes it clear that no such investigation was conducted.<sup>37</sup> Blue Ridge's November 19, 2021 report on the subject makes it quite clear that Blue Ridge merely requested that the FirstEnergy Utilities provide a statement about whether the funds were collected from consumers.<sup>38</sup> Blue Ridge accepted the FirstEnergy Utilities' response as fact, without any independent investigation.<sup>39</sup> That fails to pass muster.

Knowing that FirstEnergy Corp. had lied and deceived regulators for years concerning the source of payments for other expenses, Blue Ridge accepted as fact the FirstEnergy Utilities' claim that naming rights payments were made with FirstEnergy

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<sup>35</sup> Companies Post-Hearing Brief at 25.

<sup>36</sup> Case No. 20-1629-EL-RDR, Entry ordering that Blue Ridge expand the scope of the audit in this case to determine if the costs of the naming rights for FirstEnergy Stadium have been recovered from rate payers (Sep. 29, 2021).

<sup>37</sup> *Id.* at 98-99.

<sup>38</sup> *Id.* at 99.

<sup>39</sup> *Id.*

Corp. funds.<sup>40</sup> The PUCO should refrain from drawing any conclusion on who paid for naming rights. It should conduct another audit to more fully investigate the question of whose funds paid for the Cleveland Browns Stadium naming rights.<sup>41</sup>

**4. For consumer protection, the PUCO should reject the FirstEnergy Utilities’ “no harm no foul” logic for failing to disclose a side agreement in ESP IV.**

The FirstEnergy Utilities acknowledge they were required to, but did not, disclose a 2015 “side agreement” between FirstEnergy Service Company (“FESC”) and Sustainability Funding Alliance of Ohio, Inc. (“SFA”), made in exchange for IEU-Ohio’s non-opposition to the 2015 settlements in ESP IV.<sup>42</sup> The FirstEnergy Utilities assert that there is no evidence that nondisclosure of the side agreement altered the outcome of ESP IV.<sup>43</sup> The FirstEnergy Utilities argument is again self-serving and should be rejected. We know that the side deal was not a one-off by the FirstEnergy Utilities. It is part of a larger and wider scheme to corrupt the regulatory process in Ohio.

OCC showed that the side deal was a part of an effort by the FirstEnergy Utilities to co-opt IEU-Ohio legal counsel Sam Randazzo (with whom it had contracted for millions of dollars in “consulting services”), while at the very same time he was serving as an attorney for an adverse party in PUCO proceedings.<sup>44</sup> He then became the PUCO Chair, and abused that post by taking what FirstEnergy Corp. admitted was more than \$4 million in bribes.<sup>45</sup> Mr. Randazzo was under indictment associated with the bribery in

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 99-100.

<sup>42</sup> Companies Post-Hearing Brief at 25.

<sup>43</sup> *Id.* at 26.

<sup>44</sup> *Id.* at 103.

<sup>45</sup> *Id.*

both state and federal courts at the time of his death (and the dummy corporations with which he was associated pled guilty to crimes after his death).<sup>46</sup>

The PUCO has the authority and the obligation to prevent companies within its jurisdiction from engaging in fraud and criminal activity.<sup>47</sup> The PUCO should disregard the FirstEnergy Utilities' plea for a measured sanction for the nondisclosure of the ESP IV side deal. For consumer protection, the PUCO should impose a sanction commensurate with the gravity of the offense and underlying corrupt scheme it furthered. FirstEnergy Utilities violated the law requiring disclosures of side deals. The PUCO should not presume there was no harm to other parties or the regulatory process as a whole from FirstEnergy Utilities violation.

OCC recommends that the PUCO impose a forfeiture on the FirstEnergy Utilities in the amount of \$20,470,000 as recommended by OCC witness Brown.<sup>48</sup>

**B. Despite the FirstEnergy Utilities' claims to the contrary, the evidence shows they failed to comply with the requirements of the Distribution Modernization Rider ("DMR").**

**1. To protect consumers, the PUCO should reject the FirstEnergy Utilities' argument that the PUCO did not require them to track the expenditure of DMR funds to approved grid modernization uses.**

The FirstEnergy Utilities argue that the PUCO did not require them to track Rider DMR expenditures to particular PUCO approved grid modernization uses.<sup>49</sup> That argument should be rejected. Because the FirstEnergy Utilities placed Rider DMR funds into a money pool, neither the Oxford auditor nor the Daymark auditor could confirm that

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 105.

<sup>48</sup> Brown Direct at 76.

<sup>49</sup> Companies Post-Hearing Brief at 29.

Rider DMR funds were spent on PUCO approved grid modernization uses.<sup>50</sup> Further, the Daymark auditor could not rule out that Rider DMR funds were used to fund the passage of corrupt H.B. 6.<sup>51</sup>

There can be no doubt but that the PUCO required the FirstEnergy Utilities to track Rider DMR expenditures to particular PUCO approved grid modernization uses. When the PUCO approved Rider DMR, it required the FirstEnergy Utilities to use Rider DMR funds (and not some other funds), directly or indirectly, for grid modernization.<sup>52</sup> The PUCO also required the PUCO Staff to perform a review to “ensure that *such funds* are used, directly or indirectly, in support of grid modernization.”<sup>53</sup> The PUCO bolstered this directive in its ESP IV Eighth Entry on Rehearing when it ruled that it intended for the Rider DMR review to be ongoing and conducted in real time.<sup>54</sup> The PUCO directed the PUCO Staff to prepare an RFP for a third-party monitor to “assist Staff and to work with FirstEnergy and FirstEnergy Corp. to ensure that Rider DMR funds are *expended* appropriately.”<sup>55</sup>

The FirstEnergy Utilities filed an application for rehearing (“AFR”) of the PUCO’s Eighth Entry on Rehearing.<sup>56</sup> The FirstEnergy Utilities challenged, among other things, that part of the PUCO’s order requiring that Rider DMR spending be tracked in

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<sup>50</sup> Tr. Vol. XII (Corey) at 2585:9-18; Tr. Vol. II (Kelly) at 385:3-386:3.

<sup>51</sup> Tr. Vol. II (Kelly) at 372:7-16.

<sup>52</sup> OMAEG Ex. 30, *In re Toledo Edison Company*, Case No. 14-1297-EL-SSO (“ESP IV”), Fifth Entry on Rehearing (Oct. 12, 2016) at ¶ 282.

<sup>53</sup> *Id.* (italics added).

<sup>54</sup> OCC Ex. 15, ESP IV, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 113.

<sup>55</sup> *Id.* at ¶¶ 113-114 (emphasis added).

<sup>56</sup> ESP IV, Companies AFR (Sept. 15, 2017).



real time by a third-party monitor.<sup>57</sup> They argued that this requirement was unreasonable and unlawful because “Rider DMR revenues cannot be tracked in real time,” and that real-time monitoring could restrict the use of Rider DMR funds.<sup>58</sup> The FirstEnergy Utilities further argued:

By requiring a monitor, the Commission has improperly assumed that one can track specific dollars collected under Rider DMR to specific expenditures. In reality, revenues collected under Rider DMR lose their identity as “Rider DMR dollars” upon receipt by the Companies.<sup>59</sup>

Instead of real time tracking of Rider DMR expenditures, the FirstEnergy Utilities argued that the PUCO should allow them to do exactly what they have done in this case—merely compare the amount of funds received under Rider DMR to the total amount spent on approved DMR uses.<sup>60</sup>

The PUCO denied the AFR in its Ninth Entry on Rehearing. It rejected the argument against real time tracking of Rider DMR expenditures.<sup>61</sup> It rejected the argument that all that was required was comparing the amount of funds received under Rider DMR to the total amount spent on approved DMR uses.<sup>62</sup>

Despite the PUCO’s decision, the FirstEnergy Utilities did not track the expenditure of DMR funds, in real time or otherwise. The FirstEnergy Utilities and FirstEnergy Corp. simply did not want anyone – auditors, regulators, intervenors, or

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.*

<sup>61</sup> OCC Ex. 16, ESP IV, Ninth Entry on Rehearing (Oct. 11, 2017) at ¶ 17.

<sup>62</sup> *Id.*

anyone else – to know where dollars came from and, perhaps more importantly, how they were spent.<sup>63</sup>

Consistent with the FirstEnergy Utilities’ aversion to transparency in general and with respect to the DMR specifically, witness Bill Wang’s direct testimony made no mention of the FirstEnergy Utilities’ AFR of the PUCO’s Eighth Entry on Rehearing or the Ninth Entry on Rehearing denying the AFR.<sup>64</sup> Mr. Wang’s staff, who prepared his direct testimony at his direction, never informed him of the AFR<sup>65</sup> and by extension, the PUCO’s denial of that AFR in its Ninth Entry on Rehearing. The FirstEnergy Utilities deliberately ignored the PUCO’s Fifth, Eighth, and Ninth Entries on Rehearing requiring the tracking the expenditure of DMR funds.

The PUCO should conclude that the FirstEnergy Utilities failed to comply with its previous orders requiring tracking of the use of DMR funds.

**2. The FirstEnergy Utilities and the PUCO stated to the Ohio Supreme Court, through counsel, that tracking the expenditure of DMR dollars was required by the PUCO.**

The Ohio Supreme Court ruled that the DMR was unlawful.<sup>66</sup> During oral argument before the Court, counsel for the PUCO and the FirstEnergy Utilities agreed that the PUCO required the FirstEnergy Utilities to track the expenditure of DMR dollars in real time.<sup>67</sup> The pertinent parts of the transcript read as follows:

JUSTICE STEWART: -- and there will be continued collection of moneys from the rider and hundreds of

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<sup>63</sup> Brown Direct at 59-60.

<sup>64</sup> Companies Ex. 2, Direct Testimony of Bill Wang (Wang Direct), ESP IV (May 9, 2025).

<sup>65</sup> Tr. Vol. V (Wang) at 948:18-951:4.

<sup>66</sup> *In re Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906.

<sup>67</sup> OCC Ex. 71, Ohio Supreme Court Transcript of oral argument in *In re Ohio Edison Co.*, Case No. 2017-1444, et al. (July 9, 2025) (“Tr. ESP IV OSC Oral Argument”).

millions of dollars, is there any consequence to this not taking place in the future?

[PUCO Counsel] MR. McNAMEE: One of the specific conditions that's -- that's imposed here, the way this rider is structure, there's three years of collection and then a -- it's possible to extend it for two more years.

It won't be extended for two more years if there isn't cooperation by the -- by the utility in furthering these -- these goals. And they have been cooperating, and it's in their interest frankly to -- to move forward with these initiatives.

JUSTICE STEWART: And is that cooperation outlined somewhere, or is it just kind of a nebulous?

MR. MCNAMEE: No. No. The Commission has taken the very unusual step of hiring an outside consultant to monitor the Companies' use of the funds. And it's -- it's unusual in my experience, I have never known them to do that before, and I have done this for 32 years, to, you know, continually monitor and report back to the Commission on the Companies' cooperation and use of the funds. *So this is being tracked.* I don't think there is any realistic possibility that this would not go forward. It's a significant Commission initiative that -- that applies across the board to all the utilities.

CHIEF JUSTICE O'CONNOR: And I'm a little -- I'm curious about the auditor, the audit that is in place for the use of the funds in the three years.

[Companies' Counsel] MR. LANG: Yes, your Honor.

CHIEF JUSTICE O'CONNOR: If the auditor finds that FirstEnergy is not using or responsibly using or in a way using these -- money that's going to put them in a better fiscal, financial position to go to Phase II, maybe is what we'll call it, what happens? Because the complaint I'm hearing is there's no consequence if you disregard the purpose -- the stated purpose of this incentive.

Mr. Lang: Well, and, your Honor, *Mr. McNamee was right*, -- this is not a standard audit. This is what the Commission has set up as real-time monitoring of what the Companies are doing. *And the monitoring is that the Rider DMR*

*dollars, have to be either spent on Grid Modernization or the dollars have to be spent taking steps to lower the cost of funds needed for grid – grid investment.*

So they have to be for these two specific purposes. There is a monitor that's in place. The monitor is doing a real-time review of the Companies' operations and they can quarterly report back to the Commission –

The transcript clearly establishes that counsel for both the PUCO (Mr. McNamee) and the FirstEnergy Utilities (Mr. Lang) represented to the highest court in the State of Ohio that the expenditure of DMR dollars would be tracked. That directly contradicts FirstEnergy's claims that tracking was not required. The PUCO should find that the FirstEnergy Utilities deliberately failed to track the expenditure of DMR dollars in violation of the PUCO's Fifth Entry on Rehearing approving Rider DMR.

**3. The PUCO should reject the FirstEnergy Utilities' argument that comparing the amount of DMR funds received to the amount of funds expended in support of approved DMR is sufficient.**

In their Post-Hearing Brief, the FirstEnergy Utilities assert they collected \$458 million in DMR revenues during the DMR period.<sup>68</sup> Then, they brazenly misrepresent that “[b]oth Oxford’s and Daymark’s reviews confirm that the Companies used those (Rider DMR) funds consistent with Rider DMR’s purposes.”<sup>69</sup> This is simply not true.

What is true is that neither auditor could independently verify that the FirstEnergy Utilities spent any DMR funds on any approved grid modernization uses.<sup>70</sup> This is because the FirstEnergy Utilities placed DMR funds into the money pool. As stated by witness Wang, the DMR funds lost their identity and could not be traced once placed into

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<sup>68</sup> Companies Post-Hearing Brief at 30.

<sup>69</sup> *Id.*

<sup>70</sup> Tr. Vol. XII (Corey) at 2585:9-18; Tr. Vol. II (Kelly) at 385:3-386:3.

the money pool.<sup>71</sup> The PUCO should reject the FirstEnergy Utilities' claims to the contrary.

**4. The PUCO should reject the FirstEnergy Utilities' claim that merely receiving DMR funds satisfies the PUCO's DMR requirements.**

The FirstEnergy Utilities argue that the Oxford auditor found that simply receiving DMR revenue provided indirect support of grid modernization because it improved their financial position.<sup>72</sup> That is wrong. Otherwise, there would have been no need for the third-party monitor's review to include the *identification, quantification, and explanation* of the use of Rider DMR funds and the FirstEnergy Utilities' *use* of those funds in a manner consistent with the PUCO's directives.<sup>73</sup>

Further, in its Eighth Entry on Rehearing, the PUCO very clearly stated that the third-party monitor was to "assist Staff and to work with FirstEnergy and FirstEnergy Corp. to ensure that Rider DMR funds are *expended* appropriately."<sup>74</sup>

The PUCO never contemplated that mere receipt of Rider DMR funds would be sufficient to show an indirect use of DMR funds for grid modernization. The PUCO should reject the FirstEnergy Utilities' claim otherwise.

**5. The Daymark Audit Report's Table 1 figures are not a part of Daymark's "findings" as the FirstEnergy Utilities claim.**

The FirstEnergy Utilities reproduce the Daymark Audit Report's Table 1 in their Post-Hearing Brief. It purportedly shows the amount of DMR revenue they received

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<sup>71</sup> Tr. Vol. V (Wang) at 1123:23-1124:19.

<sup>72</sup> Companies Post-Hearing Brief at 30.

<sup>73</sup> Case No. 17-2474-EL-RDR, Entry (Dec. 13, 2017), RFP at 1 (emphasis added).

<sup>74</sup> *Id.* at ¶¶ 113-114 (emphasis added).

during the several years the rider was in effect.<sup>75</sup> The table also shows the amount the FirstEnergy Utilities allegedly spent on approved direct and indirect grid modernization uses during the same period.<sup>76</sup> The table further shows that the FirstEnergy Utilities allegedly “refunded” approximately \$28 million in 2019. The FirstEnergy Utilities claim the figures in this table represent “findings” by Daymark.<sup>77</sup> This is incorrect.

The Daymark Report’s narrative for Table 1 clearly qualifies these figures by saying Daymark “was not able to tie any of the Rider DMR funds to any specific use, as once collected the funds entered the Utility Money Pool, where dollars spent are not tracked by source.”<sup>78</sup> More importantly, the Daymark Audit Report’s findings are detailed just below Table 1 and do not include any of the figures from the table as “findings.”<sup>79</sup> The PUCO should reject the FirstEnergy Utilities’ argument.

**6. The FirstEnergy Utilities’ claim they spent \$1.68 billion on indirect grid modernization uses, but the Daymark auditor could not tie any of these expenditures to DMR funds.**

The FirstEnergy Utilities argue that money cannot be spent twice.<sup>80</sup> As such, they assert that the Daymark report shows they spent \$1.68 billion on indirect support for grid modernization.<sup>81</sup> This is wrong.

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<sup>75</sup> Companies Post-Hearing Brief at 31.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Staff Ex. 3, Daymark DMR Report at 6.

<sup>79</sup> *Id.* at 6-9.

<sup>80</sup> Companies Post-Hearing Brief at 40.

<sup>81</sup> *See id.*

Daymark investigated whether the FirstEnergy Utilities made any direct investment during the DMR period towards grid modernization.<sup>82</sup> The FirstEnergy Utilities state that they spent approximately \$39 million on “direct” grid modernization expenses that were funded through DMR.<sup>83</sup> But Daymark found no “conclusive evidence that DMR did in fact contribute to any significant, incremental direct spend on grid modernization.”<sup>84</sup> Daymark noted that “[i]t does not appear that there was any significant progress in the implementation of grid modernization programs until the PUCO approved Grid Mod I on July 17, 2019, after the Rider DMR period.”<sup>85</sup>

Next, the FirstEnergy Utilities detail the Daymark Audit Report’s list of PUCO approved possible indirect uses of DMR funds.<sup>86</sup> Daymark identified three indirect spending categories related to the cost of debt or access to equity capital: (1) debt reduction; (2) dividends; and (3) pension contributions.<sup>87</sup> Although the FirstEnergy Utilities state that they spent \$1.68 billion on indirect grid modernization on each of the foregoing three categories, Daymark concluded that they were unable to tie any of these expenditures to the use of DMR funds.

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<sup>82</sup> *Id.* at 14.

<sup>83</sup> *Id.* at 31.

<sup>84</sup> *Id.* at 26.

<sup>85</sup> *Id.* at 13.

<sup>86</sup> *Id.* at 32-34.

<sup>87</sup> Staff Ex. 3, Daymark DMR Report at 35.

Daymark was able to conclude that:

- There were no debt reductions for FirstEnergy Corp. associated with DMR revenues.<sup>88</sup> In fact FirstEnergy Corp. took on an additional \$2.4 billion in debt during the DMR period;
- There was no significant positive credit rating impact<sup>89</sup> from DMR;<sup>90</sup>
- DMR had no effect on the cost of long-term debt for the FirstEnergy Utilities;<sup>91</sup>
- There was no impact on pension plan funding;<sup>92</sup> and
- The FirstEnergy Utilities' credit ratings held during the DMR period are not materially explained by the existence of the rider funds, and the downgrades they experienced were unrelated to the elimination of the DMR.<sup>93</sup>

FirstEnergy Utilities witness Wang did not dispute any of Daymark's direct or indirect DMR expenditure conclusions.<sup>94</sup>

Based on these conclusions of Daymark, the PUCO should find that the FirstEnergy Utilities have failed to show that they used the DMR dollars directly or indirectly in support of grid modernization, as required by the Fifth Entry on Rehearing.

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<sup>88</sup> *Id.* at 8.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 39.

<sup>91</sup> *Id.* at 8.

<sup>92</sup> *Id.* at 8-9.

<sup>93</sup> *Id.* at 51.

<sup>94</sup> Tr. Vol. V (Wang) at 981:11 – 986:16, 987:9-15, 988:8-23, 989:14-19, 990:11-18, 992:11 - 993:5.



**7. The PUCO should reject the FirstEnergy Utilities' claim that Daymark found no DMR funds were used in connection with the H.B. 6 scandal.**

The FirstEnergy Utilities argue that since Daymark found there is no documented evidence that ties DMR spending to lobbying for the passage of corrupt H.B. 6, no such unlawful spending occurred.<sup>95</sup> The FirstEnergy Utilities are wrong. The Daymark auditor testified that she could not rule out that DMR funds were used to support the greedy and corrupt efforts to pass H.B. 6.<sup>96</sup>

The FirstEnergy Utilities bear the burden of proof in these proceedings.<sup>97</sup> With respect to the DMR, the FirstEnergy Utilities bear the burden to demonstrate that DMR funds collected from consumers were only used for the purposes established in ESP IV (the direct or indirect support of grid modernization).<sup>98</sup>

Here, the burden of proof is on the FirstEnergy Utilities to prove they did not spend DMR funds in support of H.B. 6. They have failed to meet their burden. The PUCO should reject the FirstEnergy Utilities' attempt to misrepresent the record.

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<sup>95</sup> Companies Post-Hearing Brief at 40.

<sup>96</sup> Tr. Vol. II (Kelly) at 372:7-16.

<sup>97</sup> O.A.C. 4901:1-37-02(E); OMAEG Ex. 16, Entry at ¶ 17 (Second Corp. Sep. Entry and RFP); OMAEG Ex. 74, RFP at 1 (FirstEnergy Corp. Sep. Entry and RFP); OMAEG Ex. 14 (Second DMR Entry and RFP); OMAEG Ex. 29 at ¶ 23 (Entry Reopening DMR Audit); OMAEG Ex. 83, Entry at ¶ 4 (First DMR Entry and RFP); OMAEG Ex. 6 at ¶ 6 (Entry Expanding Scope); OMAEG Ex. 7 at ¶ 1 (Stadium Entry).

<sup>98</sup> OMAEG Ex. 14 (Second DMR Entry and RFP); OMAEG Ex. 29 at ¶ 23 (Entry Reopening DMR Audit); OMAEG Ex. 83, Entry at ¶ 4 (First DMR Entry and RFP); OMAEG Ex. 6 at ¶ 6 (Entry Expanding Scope); OMAEG Ex. 7 at ¶ 1 (Stadium Entry).

**8. The PUCO should reject the FirstEnergy Utilities' claim that they returned DMR dollars to consumers through the significantly excessive earnings test ("SEET") process.**

The FirstEnergy Utilities claim they returned DMR dollars to consumers under the SEET process.<sup>99</sup> They are wrong.

The FirstEnergy Utilities assert:

As part of the process of applying the ESP IV consumer protections to 2017-2020, the Commission approved a broad unanimous stipulation where the Companies agreed to provide \$306 million in direct benefits to customers, including \$96 million in refunds associated with the 2017-2019 SEET proceedings and \$210 million in annual rate reductions between 2021 and 2025.<sup>100</sup>

OCC acknowledges that \$70 million from the Global Settlement were DMR funds returned to consumers (because they were included in SEET). But \$26 million was interest – it was not DMR funds.<sup>101</sup> Further, 2021-24 had nothing to do with DMR. DMR ended in 2019. Instead, the \$210 million was a goodwill adjustment.<sup>102</sup> Accordingly, the FirstEnergy Utilities refunded to consumers \$70 million of the DMR, not a penny more. Consumers should be refunded the balance.

**C. Corporate separation.**

OCC showed how the actions of FirstEnergy Corp. and the FirstEnergy Utilities (including the \$4.3 million bribe paid to former PUCO chair Randazzo) constitute a

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<sup>99</sup> Companies' Initial Brief at 40-43.

<sup>100</sup> *Id.* at 42.

<sup>101</sup> *In the Matter of the Quadrennial Review Required by R.C. 4928.143(E) for the Elec. Sec. Plans of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case Nos. 20-1476-EL-NC, et al., Kahal Testimony in Support of Settlement, 7:7-14 (Nov. 15, 2021); Stipulation and Recommendation Ex. A (Nov. 1, 2021).

<sup>102</sup> *Id.* Kollen Direct Testimony in Support of Stipulation, 7:1-8:8 (Nov. 15, 2021); Stipulation and Recommendation Ex. A (Nov. 1, 2021).

pattern and practice of corporate separation violations.<sup>103</sup> OCC also showed how FirstEnergy Corp. and the FirstEnergy Utilities used and abused the regulatory and legislative processes to charge captive distribution consumers to bail out FirstEnergy Corp.'s generation business (a corporate separation violation).<sup>104</sup>

The FirstEnergy Utilities do not rebut this evidence. Instead, they simply say that the showings do not amount to a corporate separation violation.<sup>105</sup> But that does not make FirstEnergy Utilities' claim true. OCC witness Brown testified that the nuclear plant bailout without question benefited the plants' owner – FirstEnergy Solutions.<sup>106</sup> That is a corporate separation violation, as FirstEnergy Solutions was an unregulated affiliate of FirstEnergy Utilities. Thus, the PUCO should reject the FirstEnergy Utilities' argument.

### **III. CONCLUSION**

After five long years, energy justice may finally be at hand for Ohio consumers. These proceedings have given the PUCO the evidence, rationale, and remedies for providing that justice to consumers. The PUCO should act in consumers' interest. The PUCO should adopt OCC's consumer protection recommendations.

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<sup>103</sup> Brown Direct at 78.

<sup>104</sup> *Id.*

<sup>105</sup> Companies' Post-Hearing Brief at 45-46.

<sup>106</sup> Brown Direct at 78.

Respectfully submitted,

Maureen R. Willis (0020847)  
Ohio Consumers' Counsel

/s/ William J. Michael

William J. Michael (0070921)  
Counsel of Record  
Senior Counsel

Thomas J. Brodbeck (0093920)

John R. Varanese (0044176)

John B. Steinhart (0099554)

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone [Brodbeck]: (614) 466-9565

Telephone [Varanese]: (614) 387-2965

Telephone [Steinhart]: (614) 387-2966

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[thomas.brodbeck@occ.ohio.gov](mailto:thomas.brodbeck@occ.ohio.gov)

[john.varanese@occ.ohio.gov](mailto:john.varanese@occ.ohio.gov)

[john.steinhart@occ.ohio.gov](mailto:john.steinhart@occ.ohio.gov)

(willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply Brief for Consumer Protection was served on the persons stated below via electric transmission this 4<sup>th</sup> day of August 2025.

/s/ William J. Michael  
William J. Michael  
Senior Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

#### **17-974-EL-UNC**

[thomas.lindgren@ohioAGO.gov](mailto:thomas.lindgren@ohioAGO.gov)  
[julian.johnson@ohioago.gov](mailto:julian.johnson@ohioago.gov)  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com)  
[joe.oliker@igs.com](mailto:joe.oliker@igs.com)  
[bwancheck@wanchecklaw.com](mailto:bwancheck@wanchecklaw.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[kennedy@whitt-sturtevant.com](mailto:kennedy@whitt-sturtevant.com)  
[cockrell@whitt-sturtevant.com](mailto:cockrell@whitt-sturtevant.com)  
[trent@hubaydougherty.com](mailto:trent@hubaydougherty.com)  
[mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[jfairweather@ralaw.com](mailto:jfairweather@ralaw.com)  
[ldelgrosso@ralaw.com](mailto:ldelgrosso@ralaw.com)  
[sscholes@mwe.com](mailto:sscholes@mwe.com)  
[phelms@mwe.com](mailto:phelms@mwe.com)  
[mpearlstein@mwe.com](mailto:mpearlstein@mwe.com)  
[jmitchell@taftlaw.com](mailto:jmitchell@taftlaw.com)  
[mzbiegien@taftlaw.com](mailto:mzbiegien@taftlaw.com)  
[rcascarilla@walterhav.com](mailto:rcascarilla@walterhav.com)  
[jmoscarino@walterhav.com](mailto:jmoscarino@walterhav.com)  
[mrgladman@jonesday.com](mailto:mrgladman@jonesday.com)  
[khughesblau@taftlaw.com](mailto:khughesblau@taftlaw.com)  
[eric.sitarchuk@morganlewis.com](mailto:eric.sitarchuk@morganlewis.com)

#### **Administrative Law Judges:**

[megan.addison@puco.ohio.gov](mailto:megan.addison@puco.ohio.gov)  
[matthew.sandor@puco.ohio.gov](mailto:matthew.sandor@puco.ohio.gov)

[edanford@firstenergycorp.com](mailto:edanford@firstenergycorp.com)  
[cwatchorn@firstenergycorp.com](mailto:cwatchorn@firstenergycorp.com)  
[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
[NAllen@jenner.com](mailto:NAllen@jenner.com)  
[ZCohen@jenner.com](mailto>ZCohen@jenner.com)  
[RSchar@jenner.com](mailto:RSchar@jenner.com)  
[KJestin@jenner.com](mailto:KJestin@jenner.com)  
[MKennedy@jenner.com](mailto:MKennedy@jenner.com)  
[WBarksdale@jenner.com](mailto:WBarksdale@jenner.com)  
[menillon@sullcrom.com](mailto:menillon@sullcrom.com)  
[williamsh@sullcrom.com](mailto:williamsh@sullcrom.com)  
[reind@sullcrom.com](mailto:reind@sullcrom.com)  
[shieldska@sullcrom.com](mailto:shieldska@sullcrom.com)  
[storeye@sullcrom.com](mailto:storeye@sullcrom.com)  
[newtonb@sullcrom.com](mailto:newtonb@sullcrom.com)  
[pschumacher@dmclaw.com](mailto:pschumacher@dmclaw.com)  
[gphillips@beneschlaw.com](mailto:gphillips@beneschlaw.com)  
[marcie.lape@skadden.com](mailto:marcie.lape@skadden.com)  
[iavalon@taftlaw.com](mailto:iavalon@taftlaw.com)  
[kverhalen@taftlaw.com](mailto:kverhalen@taftlaw.com)  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[easley@carpenterlipps.com](mailto:easley@carpenterlipps.com)  
[shockey@carpenterlipps.com](mailto:shockey@carpenterlipps.com)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[ctavenor@theOEC.org](mailto:ctavenor@theOEC.org)  
[knordstrom@theoec.org](mailto:knordstrom@theoec.org)  
[emcconnell@elpc.org](mailto:emcconnell@elpc.org)  
[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)

[jacqueline.st.john@puco.ohio.gov](mailto:jacqueline.st.john@puco.ohio.gov)

[dcook@isaacwiles.com](mailto:dcook@isaacwiles.com)  
[leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov)  
[dparram@brickergraydon.com](mailto:dparram@brickergraydon.com)  
[dborchers@brickergraydon.com](mailto:dborchers@brickergraydon.com)  
[rmains@brickergraydon.com](mailto:rmains@brickergraydon.com)  
[khernstein@brickergraydon.com](mailto:khernstein@brickergraydon.com)  
[rguastella@brickergraydon.com](mailto:rguastella@brickergraydon.com)

**17-2474-EL-RDR & 20-1629-EL-RDR**

[thomas.lindgren@ohioAGO.gov](mailto:thomas.lindgren@ohioAGO.gov)  
[julian.johnson@ohioAGO.gov](mailto:julian.johnson@ohioAGO.gov)  
[mkurtz@BKLLawfirm.com](mailto:mkurtz@BKLLawfirm.com)  
[kboehm@BKLLawfirm.com](mailto:kboehm@BKLLawfirm.com)  
[jkylercohn@BKLLawfirm.com](mailto:jkylercohn@BKLLawfirm.com)  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[easley@carpenterlipps.com](mailto:easley@carpenterlipps.com)  
[shockey@carpenterlipps.com](mailto:shockey@carpenterlipps.com)  
[ctavenor@theOEC.org](mailto:ctavenor@theOEC.org)  
[knordstrom@theoec.org](mailto:knordstrom@theoec.org)  
[dstinson@brickergraydon.com](mailto:dstinson@brickergraydon.com)  
[gkrassen@nopec.org](mailto:gkrassen@nopec.org)

**Administrative Law Judges:**

[megan.addison@puco.ohio.gov](mailto:megan.addison@puco.ohio.gov)  
[matthew.sandor@puco.ohio.gov](mailto:matthew.sandor@puco.ohio.gov)  
[jacqueline.st.john@puco.ohio.gov](mailto:jacqueline.st.john@puco.ohio.gov)

[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
[NAllen@jenner.com](mailto:NAllen@jenner.com)  
[ZCohen@jenner.com](mailto:ZCohen@jenner.com)  
[KJestin@jenner.com](mailto:KJestin@jenner.com)  
[MKennedy@jenner.com](mailto:MKennedy@jenner.com)  
[WBarksdale@jenner.com](mailto:WBarksdale@jenner.com)  
[gphillips@beneschlaw.com](mailto:gphillips@beneschlaw.com)  
[mpritchard@brickergraydon.com](mailto:mpritchard@brickergraydon.com)  
[trent@hubaydougherty.com](mailto:trent@hubaydougherty.com)  
[mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com)  
[emccConnell@elpc.org](mailto:emccConnell@elpc.org)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com)  
[joe.oliker@igs.com](mailto:joe.oliker@igs.com)  
[bwancheck@wanchecklaw.com](mailto:bwancheck@wanchecklaw.com)  
[dparram@brickergraydon.com](mailto:dparram@brickergraydon.com)  
[dborchers@brickergraydon.com](mailto:dborchers@brickergraydon.com)  
[khernstein@brickergraydon.com](mailto:khernstein@brickergraydon.com)  
[rguastella@brickergraydon.com](mailto:rguastella@brickergraydon.com)  
[menillon@sullcrom.com](mailto:menillon@sullcrom.com)  
[pschumacher@dmclaw.com](mailto:pschumacher@dmclaw.com)

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Consumers' Counsel electronically filed by Alana M. Noward on behalf of Michael,  
William J..